

CONTRACT #10
RFS # 345.70-10111
FA # Pending

Human Services

VENDOR:
Nursing Resource Solutions
Corporation



**STATE OF TENNESSEE
DEPARTMENT OF HUMAN SERVICES**

CITIZENS PLAZA BUILDING
400 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1403

TELEPHONE: 615-313-4700 FAX: 615-741-4165
TTY: 1-800-270-1349
www.state.tn.us/humanserv/

PHIL BREDESEN
GOVERNOR

VIRGINIA T. LODGE
COMMISSIONER

RECEIVED
SEP 03 2010
FISCAL REVIEW

September 3, 2010

Mr. James W. White, Executive Director
Tennessee General Assembly
Fiscal Review Committee
320 Sixth Ave., N.
8th Floor Rachel Jackson Building
Nashville, TN 37243

Dear Mr. White:

In May, 2009, the Department of Human Services issued a competitive procurement for the purpose of securing licensed practical nurse (LPN) and certified nurse assistant (CNA) services for the Tennessee Rehabilitation Center (TRC). The TRC is a comprehensive rehabilitation facility providing primarily on-site services to clients diagnosed with varying disabling conditions, such as traumatic brain injury, mental retardation, or autism. Subsequent to evaluation of the procurement, a contract was awarded to the company offering the lowest cost. Unfortunately, this contract is being terminated due to the contractor's inability to perform in accordance with the terms of the contract. This situation has resulted in the need for an emergency procurement in order to obtain these critical services.

Our department is now seeking to contract with Nursing Resource Solutions Corporation. This company offered the second lowest cost to the state at the time of the aforementioned competitive procurement, and they have indicated their willingness to provide the subject services for the duration of the original contract period at the rates they offered originally.

Given the circumstances and our desire to obtain quality care for vulnerable TRC clients, we were unable to submit the contract the requisite 60 days in advance. However, we hope you will understand the urgency to resolve this matter and obtain nursing services in the most expeditious manner.

If you have questions, please contact Jeff Roberts at 313-4705 or via e-mail at Jeff.Roberts@tn.gov. Otherwise, thank you for your consideration of this contract.

Sincerely,

Virginia T. Lodge
Commissioner

VTL:SRG

Attachments

**Supplemental Documentation Required for
Fiscal Review Committee**

*Contact Name:	Jeff Roberts	*Contact Phone:	615-313-4705
*Original Contract Number:	TBD	*Original RFS Number:	34570-10111
Edison Contract Number: (if applicable)	22673	Edison RFS Number: (if applicable)	N/A
*Original Contract Begin Date:	August 23, 2010	*Current End Date:	June 30, 2014
Current Request Amendment Number: (if applicable)	N/A		
Proposed Amendment Effective Date: (if applicable)	N/A		
*Department Submitting:	Department of Human Services		
*Division:	Rehabilitation Services		
*Date Submitted:	September 2, 2010		
*Submitted Within Sixty (60) days:	No		
If not, explain:	This contract is the result of an emergency procurement for nursing services at the Tennessee Rehabilitation Center. Unfortunately, the contractor that originally was the best evaluated via a competitive procurement has failed to perform adequately, and in the interest of protecting the health and safety of medically fragile rehabilitation clients, it is necessary to terminate the original contract and execute this new one.		
*Contract Vendor Name:	Nursing Resource Solutions Corporation		
*Current Maximum Liability:	\$1,350,000.00		
*Current Contract Allocation by Fiscal Year: <i>(as Shown on Most Current Fully Executed Contract Summary Sheet)</i>			
FY: 2011	FY: 2012	FY: 2013	FY: 2014
\$ 300,000.00	\$ 350,000.00	\$ 350,000.00	\$ 350,000.00
*Current Total Expenditures by Fiscal Year of Contract: N/A <i>(attach backup documentation from STARS or FDAS report)</i>			
FY:	FY:	FY:	FY:
\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:		N/A	

Supplemental Documentation Required for
Fiscal Review Committee

IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A	
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A	
*Contract Funding Source/Amount:	State:	\$1,062,450	Federal:	\$287,550
Interdepartmental:			Other:	
If "other" please define:				
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>			Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			A competitive procurement was issued in May, 2009, resulting in responsive bids from ten companies to provide the services sought. Contract award was made to the lowest bidder, but the contract has been terminated due to the contractor's failure to meet contract terms and conditions. In order to maintain the competitive nature of this procurement, the new contract is written with the company that bid the second lowest amount for the remaining portion of the original contract term, at the rates it originally bid.	
*What were the projected costs of the service for the entire term of the contract prior to contract award?			\$1,400,000.00	

Supplemental Documentation Required for Fiscal Review Committee

For all new non-competitive contracts and any contract amendment that changes Sections A or C.3. of the original or previously amended contract document, provide estimates based on information provided the Department by the vendor for determination of contract maximum liability. Add rows as necessary to provide all information requested.

If it is determined that the question is not applicable to your contract document attach detailed explanation as to why that determination was made.

Planned expenditures by fiscal year by deliverable. Add rows as necessary to indicate all estimated contract expenditures.

Deliverable description:	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN and CNA services	\$300,000.00	\$350,000.00	\$350,000.00	\$350,000.00

Proposed savings to be realized per fiscal year by entering into this contract. If amendment to an existing contract, please indicate the proposed savings to be realized by the amendment. Add rows as necessary to define all potential savings per deliverable. N/A

Deliverable description:	FY:	FY:	FY:	FY:	FY:

Comparison of cost per fiscal year of obtaining this service through the proposed contract or amendment vs. other options. List other options available (including other vendors), cost of other options, and source of information for comparison of other options (e.g. catalog, Web site). Add rows as necessary to indicate price differentials between contract deliverables. NOTE: The sources of information for the data below are the respective cost offers submitted in response to the competitive bid solicitation.

Proposed Vendor Cost: Nursing Resource Solutions	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$28.00/hr	\$29.00/hr	\$29.75/hr	\$30.25/hr
CNA	\$16.50/hr	\$17.00/hr	\$17.75/hr	\$18.25/hr
Other Vendor Cost: PSG Solutions d/b/a Consolidated Medical Staffing	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$28.33/hr	\$29.45/hr	\$30.93/hr	\$30.93/hr
CNA	\$16.99/hr	\$17.67/hr	\$18.55/hr	\$18.55/hr
Other Vendor Cost: Maxim Healthcare Svcs, Inc., d/b/a Maxim Staffing Solutions	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$28.00/hr	\$29.00/hr	\$30.00/hr	\$31.00/hr
CNA	\$18.00/hr	\$19.00/hr	\$20.00/hr	\$21.00/hr
Other Vendor Cost: Staff Station, LLC d/b/a Angel Healthcare Staffing	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$30.00/hr	\$31.00/hr	\$32.00/hr	\$32.00/hr
CNA	\$19.00/hr	\$20.00/hr	\$20.00/hr	\$20.00/hr

**Supplemental Documentation Required for
Fiscal Review Committee**

Other Vendor Cost: Medical Staffing Network, Inc.	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$31.50/hr	\$32.00/hr	\$32.50/hr	\$33.00/hr
CNA	\$19.95/hr	\$20.25/hr	\$20.55/hr	\$20.85/hr
Other Vendor Cost: Advantage Support Services	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$32.00/hr	\$32.50/hr	\$33.00/hr	\$33.50/hr
CNA	\$21.00/hr	\$21.50/hr	\$22.00/hr	\$22.50/hr
Other Vendor Cost: Inamax Medical Staffing, Inc.	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$32.99/hr	\$32.99/hr	\$34.64/hr	\$34.64/hr
CNA	\$19.99/hr	\$19.99/hr	\$20.99/hr	\$20.99/hr
Other Vendor Cost: Milestone Healthcare d/b/a Milestone Staffing Services	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$32.75/hr	\$33.50/hr	\$34.25/hr	\$35.00/hr
CNA	\$21.25/hr	\$22.00/hr	\$22.75/hr	\$23.50/hr
Other Vendor Cost: Cascade Healthcare Services, LLC	FY: 2011	FY: 2012	FY: 2013	FY: 2014
LPN	\$35.50/hr	\$36.00/hr	\$36.50/hr	\$37.00/hr
CNA	\$20.50/hr	\$21.00/hr	\$21.50/hr	\$22.00/hr

**TRANSMITTAL****Request for Procurement Document Endorsement**

TO : **Melissa E. Hargiss,** **FAX # 532-2849**
Assistant Director of the eHealth Initiative
13th Floor Tennessee Tower
312 Eight Avenue North
Nashville, TN 37243
(615) 532-1553

FROM : **David Gilliam, Procurement Coordinator** **FAX # 313-5356**

DATE : **March 10, 2009**

RFS # **345.70-159-10**

RE : **LPN and CNA Services to serve the needs of clients at the Tennessee Rehabilitation Center**

The attached service procurement document involves the state of Tennessee buying medical/mental health-related professional, pharmaceutical, laboratory, or imaging type services. Accordingly, it requires the review and support of the eHealth Initiative staff. The purpose of this communication is to request said review and support.

Please sign below to document the review and support of the subject procurement document by the eHealth Initiative, and return this communication at your earliest convenience.

If there are any questions or concerns about this matter, contact David Gilliam at (615) 313-2270. Thank you for your help.

Attachment(s)

(Note to Requesting Party: Attachment(s) must include the ~~proposed~~ proposed RFP, non-competitive contract request, competitive negotiation request, alternative procurement process request, contract, or amendment)

eHealth Initiative Endorsement :

Melissa Hargiss

Assistant Director of the eHealth Initiative

3-10-09

Date

Non-Competitive Contract Request

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.


Route a completed request, as one file in PDF format, via e-mail attachment sent to: Aggsprs.Aggsprs@state.tn.us

APPROVED

COMMISSIONER OF FINANCE & ADMINISTRATION

The proposed contract shall not begin before the date that this request is approved.

Request Tracking #	34570-03711
Procuring Agency	Department of Human Services
Proposed Contractor	Nursing Resource Solutions Corp.
Proposed Contract Period (with ALL options to extend exercised)	46 months and 9 days
Maximum Contract Cost (with ALL options to extend exercised)	\$ 1,350,000.00
Office for Information Resources Endorsement (information technology service; N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
eHealth Initiative Support (health-related professional, pharmaceutical, laboratory, or imaging service)	<input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/> Original Approval Attached
Human Resources Support (state employee training service)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
Procuring Agency Previously Procured the Subject Service <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, it was procured by... <input type="checkbox"/> RFP <input checked="" type="checkbox"/> Another Competitive Method <input type="checkbox"/> Non-Competitive Negotiation	
Service Description (brief summary only-- do NOT restate the proposed scope of service) Licensed Practical Nurse and Certified Nurse Assistant services.	
Explanation of Need for or Requirement Placed on the State to Acquire the Service The State of Tennessee, Department of Human Services, operates a statewide comprehensive residential rehabilitation center in Smyrna. The clients served in this center possess a variety of severe and multiple disabilities, and require the support of medical professionals, including nursing staff.	
Name & Address of the Contractor's Principal Owner(s) (NOT required for a TN state education institution) Nursing Resource Solutions Corp. 1908B Church Street Nashville, TN 37203 The company is an S Corporation.	

Request Tracking #	34570-03711
Evidence Contractor's Experience & Length Of Experience Providing the Service Nursing Resource Solutions was established in 1999, and is headquartered in Nashville, Tennessee. It provides supplemental healthcare staffing services for clients across the country.	
Efforts to Identify Reasonable, Competitive, Procurement Alternatives The subject vendor has agreed to provide nurse and nurse assistant services at the rates it submitted in response to a competitive bid solicitation May, 2009. As a result, this could only be viewed as a competitive contract.	
Justification – specifically explain why non-competitive negotiation is in the best interest of the state As stated above and on the associated e-mails, this vendor selection represents an outcome of a competitive process that culminated with a contract award to the best-evaluated bidder in May, 2009. This bidder has now defaulted on its contract, and the second place vendor has agreed to provide the services at the rates it initially bid for the remainder of the original contract term.	
Agency Head Signature and Date <i>(MUST be signed by the ACTUAL agency head as detailed on the current Signature Certification. Signature by an authorized signatory is acceptable only in documented exigent circumstances)</i> <div style="display: flex; justify-content: space-between; align-items: center;">  <div style="text-align: right;">9-1-10</div> </div>	

**CONTRACT**

(FA-type fee-for-service contract with an individual, business, non-profit, or governmental entity of another state)

Agency Tracking # 34570-10111	Edison ID 22673
Contractor Nursing Resource Solutions Corporation	Contractor Federal Employer Identification or Social Security # <input type="checkbox"/> C- or <input checked="" type="checkbox"/> V- 271478233-00

Service

TRC Health Consultant Services - LPNs & CNAs

Contract Begin Date August 23, 2010		Contract End Date June 30, 2014		Subrecipient or Vendor <input type="checkbox"/> Subrecipient <input checked="" type="checkbox"/> Vendor		CFDA # (s) 84.126
FY	State	Federal	Interdepartmental	Other	TOTAL Contract Amount	
2011	\$236,100.00	\$63,900.00	\$0.00	\$0.00	\$300,000.00	
2012	\$275,450.00	\$74,550.00	\$0.00	\$0.00	\$350,000.00	
2013	\$275,450.00	\$74,550.00	\$0.00	\$0.00	\$350,000.00	
2014	\$275,450.00	\$74,550.00	\$0.00	\$0.00	\$350,000.00	
					\$0.00	
					\$0.00	
TOTAL:	\$1,062,450.00	\$287,550.00	\$0.00	\$0.00	\$1,350,000.00	

American Recovery and Reinvestment Act (ARRA) Funding - ☐ YES ☒ NO

OCR USE FA	Agency Contact & Telephone # Fiscal Contact Name (615) 313-0000	
	Agency Budget Officer Approval (there is a balance in the appropriation from which this obligation is required to be paid that is not otherwise encumbered to pay obligations previously incurred) Jeffrey W. Roberts	
	Speed Code HS00000821	Account Code 70804000

Contractor Ownership/Control

☒ African American
 ☐ Person w/ Disability
 ☐ Hispanic
 ☒ Small Business
 ☐ Government

☐ Asian
 ☐ Female
 ☐ Native American
 ☐ NOT Minority/Disadvantaged
 ☐ Other

Contractor Selection Method

☐ RFP
 ☐ Competitive Negotiation *
 ☒ Alternative Competitive Method *

☐ Non-Competitive Negotiation *
 ☐ Other *

*** Procurement Process Summary**

This contract is written with the second best evaluated Offeror to RFS # 34570-38009.

**CONTRACT
BETWEEN THE STATE OF TENNESSEE,
DEPARTMENT OF HUMAN SERVICES
AND
NURSING RESOURCE SOLUTIONS CORPORATION**

This Contract, by and between the State of Tennessee, Department of Human Services, hereinafter referred to as the "State" and Nursing Resource Solutions Corporation, hereinafter referred to as the "Contractor," is for the provision of nursing and nurse assistant services, as further defined in the "SCOPE OF SERVICES."

The Contractor is an S Corporation
Contractor Federal Employer Identification or Social Security Number: 27-1478233
Contractor Place of Incorporation or Organization: Tennessee

A. SCOPE OF SERVICES:

- A.1. The Contractor shall provide all service and deliverables as required, described, and detailed by this Scope of Services and shall meet all service and delivery timelines specified in the Scope of Services section or elsewhere in this Contract.
- A.2. The Contractor shall ensure that an adequate number of qualified Licensed Practical Nurses (LPNs) and Certified Nurse Assistants (CNAs) are available at all times in order to meet the shift needs of the TRC.
- A.3. The Contractor shall, through the assignment and placement of qualified Licensed Practical Nursing (LPN) personnel, provide direct patient care and medical attention to Tennessee Rehabilitation Center (TRC) clients possessing a wide variety of physical, mental and emotional disabilities. Nursing care shall be provided in accordance with nursing and ethical standards.
- A.4. The Contractor's LPN personnel shall perform duties including, but not limited to, the administration of medication and the accurate recording of its distribution, conducting bowel management programs and sterile catheterization, and appropriately assisting clients with severe mobility impairments with activities such as dressing, bathing, feeding, and transfers. Administrative direction and supervision for these personnel will be provided by the Director of Nurses at the TRC and/or their designee.
- A.5. The Contractor's LPN personnel shall appropriately document, in a timely manner, medicines administered, doctors' orders, nursing assessments, and care provided.
- A.6. The Contractor's LPN personnel shall maintain current Cardio Pulmonary Resuscitation (CPR) certification and provide documentation of said certification at the State's request.
- A.7. The Contractor's LPN personnel shall respond appropriately to emergency medical situations.
- A.8. The Contractor's LPN personnel shall work with an interdisciplinary team of rehabilitation and medical professionals to communicate, plan, coordinate, and deliver needed, individualized services to clients in a respectful and professional manner.
- A.9. The Contractor shall prescreen LPN personnel before making referrals to the State, in order to determine that candidates possess qualifications and competencies appropriate to meet the unique needs of clients of the TRC.

- a. No later than August 25, 2010, and subsequently throughout the term of the Contract as requested by the State, the Contractor shall provide to the State, for each candidate referred:
 - 1) A resume;
 - 2) A list of three professional references, including company name and address, name of a contact person, phone number, and e-mail address;
 - 3) A current, valid Tennessee LPN license in good standing;
 - 4) Current CPR certification.
 - b. The Contractor shall coordinate with the State to schedule interviews for each candidate referred.
 - c. The State will notify the Contractor of each candidate's acceptability. If a sufficient number of candidates have not been deemed acceptable by the State, the Contractor shall refer additional candidates. In screening potential candidates, the State will give preference to individuals who possess recent experience:
 - 1) working with individuals with multiple disabilities that may include a combination of behavioral, emotional, physical, and cognitive disabilities;
 - 2) working with an interdisciplinary team of rehabilitation and medical professionals to communicate, plan, coordinate, and deliver needed, individualized services to clients; and
 - 3) in a rehabilitation setting.
- A.10 The Contractor's LPN personnel shall maintain current, valid Tennessee licensure in good standing and provide the TRC a copy of each license renewal, within seven business days of receipt.
- A.11. The Contractor shall, through the assignment and placement of qualified Certified Nurse Assistant (CNA) personnel, provide direct patient care for TRC clients possessing a wide variety of physical, mental, and emotional disabilities. Nurse assistant care shall be provided in accordance with ethical standards and with guidelines and policies of the TRC.
- A.12. The Contractor's CNA personnel shall perform duties including, but not limited to, taking vital signs, utilizing appropriate transfer techniques, and assisting clients with activities such as dressing, bathing, feeding, room care and laundry. Administrative direction and supervision for these personnel will be provided by the Director of Nurses at the TRC and/or their designee.
- A.13. The Contractor's CNA personnel shall be responsible for accurately and timely documenting care provided to TRC clients and accurately and timely documenting medical or behavioral incidents that occur.
- A.14. The Contractor's CNA personnel shall maintain CPR certification and provide documentation of said certification at the State's request.
- A.15. The Contractor's CNA personnel shall respond appropriately to emergency medical situations and shall immediately communicate any emergency medical situation to LPN staff.
- A.16. The Contractors' CNA personnel shall work in a cooperative, professional, and effective manner with an interdisciplinary rehabilitation team to ensure that services are delivered to TRC clients in a respectful and professional manner.
- A.17. The Contractor shall prescreen CNA personnel before making referrals to the State, in order to determine that candidates possess qualifications and competencies appropriate to meet the unique needs of clients of the TRC.

- a. No later than August 25, 2010, and subsequently throughout the term of the Contract as requested by the State, the Contractor shall provide to the State, for each candidate referred:
 - 1) A resume;
 - 2) A list of three professional references, including company name and address, name of a contact person, phone number, and e-mail address;
 - 3) A current, valid Tennessee CNA certificate in good standing; Current CPR certification.
 - b. The Contractor shall coordinate with the State to schedule interviews for each candidate referred.
 - c. The State will notify the Contractor of each candidate's acceptability. If a sufficient number of candidates have not been deemed acceptable by the State, the Contractor shall refer additional candidates. In screening potential candidates, the State will give preference to individuals who possess recent experience:
 - 1) working with individuals with multiple disabilities that may include a combination of behavioral, emotional, physical, and cognitive disabilities;
 - 2) working with an interdisciplinary team of rehabilitation and medical professionals to communicate, plan, coordinate, and deliver needed, individualized services to clients; and
 - 3) in a rehabilitation setting.
- A.18. The Contractor's CNA personnel shall maintain current, valid Tennessee certification in good standing and provide the TRC a copy of each certificate renewal, within seven business days of receipt.
- A.19. The Contractor shall require that its employees maintain professional attitudes, a congenial demeanor, and decorum at all times, and that its employees refrain from use of alcohol, illegal substances, and inappropriate language when on campus or in the company of TRC clients, faculty, staff, or visitors. The State reserves the right to refuse the services of any employee of the Contractor not meeting these minimum standards.
- A.20. The Contractor shall ensure that its employees are appropriately attired in professional nursing uniforms that contribute to projecting an image of quality and professionalism. At minimum, the Contractor shall require that its employees wear clean uniforms, which include a nametag that identifies them as an employee of the Contractor.
- A.21. The State reserves the right to reject any candidate referred by the Contractor at any time.
- A.22. The State will provide orientation to new personnel. Up to four (4) hours of initial orientation shall be provided at no cost to the State.
- A.23. The Contractor shall designate a primary on-call scheduling coordinator with which appropriate TRC staff may communicate in a timely manner regarding shift needs. If the scheduling coordinator is unavailable at the time of the contact from TRC staff, a return call or e-mail shall be initiated by the scheduling coordinator within a thirty (30) minute time frame. In the event that the primary on-call scheduling coordinator is unavailable, the Contractor shall notify the State in advance of and provide contact information for an alternate scheduling coordinator.
- A.24. On or before the 15th day of a calendar month, the State will notify the Contractor's on-call scheduling coordinator in writing regarding its routine staffing needs for the upcoming calendar month. The Contractor shall respond in writing by providing a list of the individual(s) proposed to fill the routine staffing needs by position, name, and shift, no

later than the 22nd day of the calendar month (if the 22nd is not a business day, by the next business day following). The State may impose liquidated damages for Contractor failure to fill routine staffing needs which are communicated by the State. (Reference Attachment A – Breaches and Associated Liquidated Damages).

- A.25. As they arise, the State will notify the Contractor's on-call scheduling coordinator in writing regarding its non-routine staffing needs. For these non-routine needs that are communicated at least forty-eight (48) hours in advance, the Contractor shall respond in writing as soon as possible by providing the name(s) of the individual(s) proposed to fill the non-routine staffing needs. The State may impose liquidated damages if the Contractor fails to fill non-routine staffing needs which are communicated by the State more than forty-eight (48) hours in advance of the need. (Reference Attachment A – Breaches and Associated Liquidated Damages).
- A.26. The State, within a minimum of forty-eight (48) hours notice, reserves the right to cancel scheduling requests previously communicated to the Contractor.

B. CONTRACT TERM:

This Contract shall be effective for the period commencing on August 23, 2010 and ending on June 30, 2014. The State shall have no obligation for services rendered by the Contractor which are not performed within the specified period.

C. PAYMENT TERMS AND CONDITIONS:

- C.1. Maximum Liability. In no event shall the maximum liability of the State under this Contract exceed One Million Three Hundred Fifty Thousand Dollars and No Cents (\$1,350,000.00). The payment rates in Section C.3 shall constitute the entire compensation due the Contractor for the Service and all of the Contractor's obligations hereunder regardless of the difficulty, materials or equipment required. The payment rates include, but are not limited to, all applicable taxes, fees, overheads, and all other direct and indirect costs incurred or to be incurred by the Contractor.

The Contractor is not entitled to be paid the maximum liability for any period under the Contract or any extensions of the Contract for work not requested by the State. The maximum liability represents available funds for payment to the Contractor and does not guarantee payment of any such funds to the Contractor under this Contract unless the State requests work and the Contractor performs said work. In which case, the Contractor shall be paid in accordance with the payment rates detailed in Section C.3. The State is under no obligation to request work from the Contractor in any specific dollar amounts or to request any work at all from the Contractor during any period of this Contract.

- C.2. Compensation Firm. The payment rates and the maximum liability of the State under this Contract are firm for the duration of the Contract and are not subject to escalation for any reason unless amended.
- C.3. Payment Methodology. The Contractor shall be compensated based on the payment rates herein for units of service authorized by the State in a total amount not to exceed the Contract Maximum Liability established in Section C.1.
- a. The Contractor's compensation shall be contingent upon the satisfactory completion of units, milestones, or increments of service defined in Section A.
 - b. The Contractor shall be compensated for said units, milestones, or increments of service based upon the following payment rates:

Service Description	Amount August 23, 2010- June 30, 2011 (per compensable increment)	Amount July 1, 2011- June 30, 2012 (per compensable increment)	Amount July 1, 2012- June 30, 2013 (per compensable increment)	Amount July 1, 2013- June 30, 2014 (per compensable increment)
Licensed Practical Nurse	\$ 28.00 per hour	\$ 29.00 per hour	\$ 29.75 per hour	\$ 30.25 per hour
Certified Nurse Assistant	\$ 16.50 per hour	\$ 17.00 per hour	\$ 17.75 per hour	\$ 18.25 per hour

- c. The Contractor shall not be compensated for travel time to the primary location of service provision.
 - d. The Contractor shall utilize the period from August 23, 2010 through August 31, 2010 as a pre-implementation period.
- C.4. Travel Compensation. The Contractor shall not be compensated or reimbursed for travel, meals, or lodging.
- C.5. Invoice Requirements. The Contractor shall invoice the State only for completed increments of service and for the amount stipulated in Section C.3, above, and as required below prior to any payment.
- a. The Contractor shall submit invoices no more often than monthly, with all necessary supporting documentation, to:

Director of Nursing
Department of Human Services
Tennessee Rehabilitation Center
460 9th Avenue
Smyrna, TN 37167
 - b. The Contractor agrees that each invoice submitted shall clearly and accurately (all calculations must be extended and totaled correctly) detail the following required information.
 - (1) Invoice/Reference Number (assigned by the Contractor);
 - (2) Invoice Date;
 - (3) Invoice Period (period to which all invoiced charges are applicable);
 - (4) Contract Number (assigned by the State to this Contract);
 - (5) Account Name: Department of Human Services; Division of Rehabilitation Services;
 - (6) Account/Customer Number (uniquely assigned by the Contractor to the above-referenced Account Name);
 - (7) Contractor Name;
 - (8) Contractor Federal Employer Identification Number or Social Security Number (as referenced in this Contract);
 - (9) Contractor Contact (name, phone, and/or fax for the individual to contact with billing questions);
 - (10) Contractor Remittance Address;
 - (11) Complete Itemization of Charges, which shall detail the following:
 - i. Service or Milestone Description (including name /title as applicable) of each service invoiced;

- ii. Number of Completed Units, Increments, Hours, or Days as applicable, of each service invoiced;
 - iii. Applicable Payment Rate (as stipulated in Section C.3.) of each service invoiced;
 - iv. Amount Due by Service; and
 - v. Total Amount Due for the invoice period.
 - c. The Contractor understands and agrees that an invoice to the State under this Contract shall:
 - (1) include only charges for service described in Contract Section A and in accordance with payment terms and conditions set forth in Contract Section C;
 - (2) not include any future work but will only be submitted for completed service; and
 - (3) not include sales tax or shipping charges.
 - d. The Contractor agrees that timeframe for payment (and any discounts) begins when the State is in receipt of each invoice meeting the minimum requirements above.
 - e. The Contractor shall complete and sign a "Substitute W-9 Form" provided to the Contractor by the State. The taxpayer identification number contained in the Substitute W-9 submitted to the State shall agree to the Federal Employer Identification Number or Social Security Number referenced in this Contract for the Contractor. The Contractor shall not invoice the State for services until the State has received this completed form.
- C.6. Payment of Invoice. The payment of the invoice by the State shall not prejudice the State's right to object to or question any invoice or matter in relation thereto. Such payment by the State shall neither be construed as acceptance of any part of the work or service provided nor as an approval of any of the amounts invoiced therein.
- C.7. Invoice Reductions. The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the State, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute proper remuneration for compensable services.
- C.8. Deductions. The State reserves the right to deduct from amounts which are or shall become due and payable to the Contractor under this or any Contract between the Contractor and the State of Tennessee any amounts which are or shall become due and payable to the State of Tennessee by the Contractor.
- C.9. Automatic Deposits. The Contractor shall complete and sign an "Authorization Agreement for Automatic Deposit (ACH Credits) Form." This form shall be provided to the Contractor by the State. Once this form has been completed and submitted to the State by the Contractor all payments to the Contractor, under this or any other Contract the Contractor has with the State of Tennessee shall be made by Automated Clearing House (ACH). The Contractor shall not invoice the State for services until the Contractor has completed this form and submitted it to the State.
- D. STANDARD TERMS AND CONDITIONS:**
- D.1. Required Approvals. The State is not bound by this Contract until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

- D.2. Modification and Amendment. This Contract may be modified only by a written amendment executed by all parties hereto and approved by the appropriate Tennessee State officials in accordance with applicable Tennessee State laws and regulations.
- D.3. Termination for Convenience. The State may terminate this Contract without cause for any reason. Said termination shall not be deemed a Breach of Contract by the State. The State shall give the Contractor at least thirty (30) days written notice before the effective termination date. The Contractor shall be entitled to receive compensation for satisfactory, authorized service completed as of the termination date, but in no event shall the State be liable to the Contractor for compensation for any service which has not been rendered. Upon such termination, the Contractor shall have no right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- D.4. Termination for Cause. If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor violates any terms of this Contract, the State shall have the right to immediately terminate the Contract and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Contractor shall not be relieved of liability to the State for damages sustained by virtue of any breach of this Contract by the Contractor.
- D.5. Subcontracting. The Contractor shall not assign this Contract or enter into a subcontract for any of the services performed under this Contract without obtaining the prior written approval of the State. If such subcontracts are approved by the State, they shall contain, at a minimum, sections of this Contract below pertaining to "Conflicts of Interest," "Nondiscrimination," and "Records" (as identified by the section headings). Notwithstanding any use of approved subcontractors, the Contractor shall be the prime contractor and shall be responsible for all work performed.
- D.6. Conflicts of Interest. The Contractor warrants that no part of the total Contract Amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed relative to this Contract.
- D.7. Nondiscrimination. The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of disability, age, race, color, religion, sex, national origin, or any other classification protected by Federal, Tennessee State constitutional, or statutory law. The Contractor shall, upon request, show proof of such nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.
- D.8. Prohibition of Illegal Immigrants. The requirements of Public Acts of 2006, Chapter Number 878, of the state of Tennessee, addressing the use of illegal immigrants in the performance of any Contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.
- a. The Contractor hereby attests, certifies, warrants, and assures that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at Attachment B, hereto, semi-annually during the period of this Contract. Such

attestations shall be maintained by the Contractor and made available to state officials upon request.

- b. Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the period of this Contract, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an illegal immigrant to perform work relative to this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work relative to this Contract. Attestations obtained from such subcontractors shall be maintained by the Contractor and made available to state officials upon request.
 - c. The Contractor shall maintain records for all personnel used in the performance of this Contract. Said records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d. The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Public Chapter 878 of 2006 for acts or omissions occurring after its effective date. This law requires the Commissioner of Finance and Administration to prohibit a contractor from contracting with, or submitting an offer, proposal, or bid to contract with the State of Tennessee to supply goods or services for a period of one year after a contractor is discovered to have knowingly used the services of illegal immigrants during the performance of this Contract.
 - e. For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not either a United States citizen, a Lawful Permanent Resident, or a person whose physical presence in the United States is authorized or allowed by the federal Department of Homeland Security and who, under federal immigration laws and/or regulations, is authorized to be employed in the U.S. or is otherwise authorized to provide services under the Contract.
- D.9. Records. The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, insofar as they relate to work performed or money received under this Contract, shall be maintained for a period of three (3) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- D.10. Monitoring. The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- D.11. Progress Reports. The Contractor shall submit brief, periodic, progress reports to the State as requested.
- D.12. Strict Performance. Failure by any party to this Contract to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any such term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the parties hereto.
- D.13. Independent Contractor. The parties hereto, in the performance of this Contract, shall not act as employees, partners, joint venturers, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent

contracting entities and that nothing in this Contract shall be construed to create an employer/employee relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

The Contractor, being an independent contractor and not an employee of the State, agrees to carry adequate public liability and other appropriate forms of insurance, including adequate public liability and other appropriate forms of insurance on the Contractor's employees, and to pay all applicable taxes incident to this Contract.

- D.14. State Liability. The State shall have no liability except as specifically provided in this Contract.
- D.15. Force Majeure. The obligations of the parties to this Contract are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, natural disasters, riots, wars, epidemics, or any other similar cause.
- D.16. State and Federal Compliance. The Contractor shall comply with all applicable State and Federal laws and regulations in the performance of this Contract.
- D.17. Governing Law. This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee. The Contractor agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Contract. The Contractor acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under *Tennessee Code Annotated*, Sections 9-8-101 through 9-8-407.
- D.18. Completeness. This Contract is complete and contains the entire understanding between the parties relating to the subject matter contained herein, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties relating hereto, whether written or oral.
- D.19. Severability. If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions hereof shall not be affected thereby and shall remain in full force and effect. To this end, the terms and conditions of this Contract are declared severable.
- D.20. Headings. Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.

E. SPECIAL TERMS AND CONDITIONS:

- E.1. Conflicting Terms and Conditions. Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, these special terms and conditions shall control.
- E.2. Communications and Contacts. All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by EMAIL or facsimile transmission with recipient confirmation. Any such communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address, facsimile number, or EMAIL address as set forth below or to that of such

other party or address, as may be hereafter specified by written notice.

The State:

Director of Nursing
Department of Human Services
Tennessee Rehabilitation Center
460 9th Avenue
Smyrna, TN 37167
Telephone # (615) 459-6811 ext. 115
FAX # (615) 459-0371

The Contractor:

Darren White, Director of Operations
Nursing Resource Solutions, Corp.
1908B Church St.
Nashville, TN 37203
darren@nursingresourcesolutions.com
Telephone #: 615-327-3480
Fax #: 615-327-0695

All instructions, notices, consents, demands, or other communications shall be considered effectively given upon receipt or recipient confirmation as may be required.

- E.3. Subject to Funds Availability. The Contract is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate the Contract upon written notice to the Contractor. Said termination shall not be deemed a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. Should such an event occur, the Contractor shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.
- E.4. Tennessee Consolidated Retirement System. The Contractor acknowledges and understands that, subject to statutory exceptions contained in *Tennessee Code Annotated*, Section 8-36-801, *et. seq.*, the law governing the Tennessee Consolidated Retirement System (TCRS), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established pursuant to *Tennessee Code Annotated*, Title 8, Chapter 35, Part 3 accepts state employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the period of this Contract.
- E.5. Insurance. The Contractor shall carry adequate liability and other appropriate forms of insurance.
- a. The Contractor shall maintain, at minimum, the following insurance coverage:

- (1) Comprehensive Commercial General Liability (including personal injury & property damage, premises/operations, independent contractor, contractual liability and completed operations/products) with a bodily injury/property damage combined single limit not less than one million dollars (\$1,000,000.00) per occurrence and two million five hundred thousand dollars (\$2,500,000.00) aggregate.
 - b. At any time State may require the Contractor to provide a valid Certificate of Insurance detailing Coverage Description; Insurance Company & Policy Number; Exceptions and Exclusions; Policy Effective Date; Policy Expiration Date; Limit(s) of Liability; and Name and Address of Insured. Failure to provide required evidence of insurance coverage shall be a material breach of this Contract.
- E.6. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State shall be regarded as confidential information in accordance with the provisions of applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards. Such confidential information shall not be disclosed, and all necessary steps shall be taken by the Contractor to safeguard the confidentiality of such material or information in conformance with applicable state and federal law, state and federal rules and regulations, departmental policy, and ethical standards.

The Contractor's obligations under this section do not apply to information in the public domain; entering the public domain but not from a breach by the Contractor of this Contract; previously possessed by the Contractor without written obligations to the State to protect it; acquired by the Contractor without written restrictions against disclosure from a third party which, to the Contractor's knowledge, is free to disclose the information; independently developed by the Contractor without the use of the State's information; or, disclosed by the State to others without restrictions against disclosure. Nothing in this paragraph shall permit Contractor to disclose any information that is confidential under federal or state law or regulations, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties.

It is expressly understood and agreed the obligations set forth in this section shall survive the termination of this Contract.
- E.7. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its accompanying regulations.
 - a. Contractor warrants to the State that it is familiar with the requirements of HIPAA and its accompanying regulations, and will comply with all applicable HIPAA requirements in the course of this Contract.
 - b. Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by HIPAA and its regulations, in the course of performance of the Contract so that both parties will be in compliance with HIPAA.
 - c. The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by HIPAA and that are reasonably necessary to keep the State and Contractor in compliance with HIPAA. This provision shall not apply if information received by the State under this Contract is NOT "protected health information" as defined by HIPAA, or if HIPAA permits

the State to receive such information without entering into a business associate agreement or signing another such document.

- E.8. State Furnished Property. The Contractor shall be responsible for the correct use, maintenance, and protection of all articles of nonexpendable, tangible, personal property furnished by the State for the Contractor's temporary use under this Contract. Upon termination of this Contract, all property furnished shall be returned to the State in good order and condition as when received, reasonable use and wear thereof excepted. Should the property be destroyed, lost, or stolen, the Contractor shall be responsible to the State for the residual value of the property at the time of loss.

- E.9. Incorporation of Additional Documents: Included in this Contract by reference are the following documents:

- a. The Contract document and its attachments
- b. All Clarifications and addenda made to the Contractor's Solicitation Response
- c. The Professional Service Solicitation and its associated amendments
- d. Technical Specifications provided to the Contractor
- e. The Contractor's Solicitation Response

In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these documents shall govern in order of precedence detailed above.

- E.10. Debarment and Suspension. The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors and their principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b. have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c. are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d. have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- E.11. Limitation of Liability. The parties agree that the total liability of the Contractor for breach of this Contract shall not exceed two (2) times the value of this Contract. The value shall be established by the Contract Maximum Liability in Section C.1 and increased by

subsequent amendments if any. The foregoing provision shall not limit the Contractor's liability for intentional torts, criminal acts or fraudulent conduct.

- E.12. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys for the State in the event such service is necessitated to enforce the terms of this Contract or otherwise enforce the obligations of the Contractor to the State.

In the event of any such suit or claim, the Contractor shall give the State immediate notice thereof and shall provide all assistance required by the State in the State's defense. The State shall give the Contractor written notice of any such claim or suit, and the Contractor shall have full right and obligation to conduct the Contractor's own defense thereof. Nothing contained herein shall be deemed to accord to the Contractor, through its attorney(s), the right to represent the State of Tennessee in any legal matter, such rights being governed by *Tennessee Code Annotated*, Section 8-6-106.

- E.13. **Breach.** A party shall be deemed to have breached the Contract if any of the following occurs:

- failure to perform in accordance with any term or provision of the Contract;
- partial performance of any term or provision of the Contract;
- any act prohibited or restricted by the Contract, or
- violation of any warranty.

For purposes of this Contract, these items shall hereinafter be referred to as a "Breach."

- a. **Contractor Breach**— The State shall notify Contractor in writing of a Breach.

- (1) In event of a Breach by Contractor, the State shall have available the remedy of Actual Damages and any other remedy available at law or equity.
- (2) **Liquidated Damages**— In the event of a Breach, the State may assess Liquidated Damages. The State shall notify the Contractor of amounts to be assessed as Liquidated Damages. The parties agree that due to the complicated nature of the Contractor's obligations under this Contract it would be difficult to specifically designate a monetary amount for a Breach by Contractor as said amounts are likely to be uncertain and not easily proven. Contractor hereby represents and covenants it has carefully reviewed the Liquidated Damages contained in above referenced, Attachment A and agree that said amounts represent a reasonable relationship between the amount and what might reasonably be expected in the event of Breach, and are a reasonable estimate of the damages that would occur from a Breach. It is hereby agreed between the parties that the Liquidated Damages represent solely the damages and injuries sustained by the State in losing the benefit of the bargain with Contractor and do not include any injury or damage sustained by a third party. The Contractor agrees that the liquidated damage amount is in addition to any amounts Contractor may owe the State pursuant to the indemnity provision or other section of this Contract.

The State may continue to withhold the Liquidated Damages or a portion

thereof until the Contractor cures the Breach, the State exercises its option to declare a Partial Default, or the State terminates the Contract. The State is not obligated to assess Liquidated Damages before availing itself of any other remedy. The State may choose to discontinue Liquidated Damages and avail itself of any other remedy available under this Contract or at law or equity; provided, however, Contractor shall receive a credit for said Liquidated Damages previously withheld except in the event of a Partial Default.

- (3) **Partial Default**—In the event of a Breach, the State may declare a Partial Default. In such case, the State shall provide the Contractor written notice of: (1) the date which Contractor shall terminate providing the service associated with the Breach; and (2) the date the State will begin to provide the service associated with the Breach. Notwithstanding the foregoing, the State may revise the time periods contained in the notice written to the Contractor.

In the event the State declares a Partial Default, the State may withhold, together with any other damages associated with the Breach, from the amounts due the Contractor the greater of: (1) amounts which would be paid the Contractor to provide the defaulted service; or (2) the cost to the State of providing the defaulted service, whether said service is provided by the State or a third party. To determine the amount the Contractor is being paid for any particular service, the Department shall be entitled to receive within five (5) days any requested material from Contractor. The State shall make the final and binding determination of said amount.

The declaration of a Partial Default prior to the State's assessment of Liquidated Damages does not preempt the State's right to withhold Liquidated Damages for the period during which the Contractor has failed to perform the services in question. Upon Partial Default, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount. Contractor agrees to cooperate fully with the State in the event a Partial Default is taken.

- (4) **Opportunity to Cure**—
- (a) At the State's option, the Contractor shall have the opportunity to cure a breach of contract resulting in failure to perform. The request for a cure period must be submitted in writing within three (3) business days of Contractor being notified of, or becoming aware of, a failure to perform the services as outlined within this Contract.
 - (b) The cure period granted under subsection (a) shall not exceed fifteen (15) business days. The Contractor may submit a written request for a cure period longer than fifteen (15) days, setting forth the reasons for such request.
 - (c) This opportunity to cure shall not be available in circumstances in which the Contractor intentionally withholds its services or otherwise refuses to perform. The State will not consider a request to cure contract performance where there have been repeated problems with respect to identical or similar issues, if a cure period would unreasonably delay completion of the Contract, or if State operations dependent on the Contract would

be adversely impacted.

- (5) **Contract Termination**— In the event of a Breach, the State may terminate the Contract immediately or in stages. The Contractor shall be notified of the termination in writing by the State. Said notice shall hereinafter be referred to as Termination Notice. The Termination Notice may specify either that the termination is to be effective immediately, on a date certain in the future, or that the Contractor shall cease operations under this Contract in stages. In the event of a termination, the State may withhold any amounts which may be due Contractor without waiver of any other remedy or damages available to the State at law or at equity. The Contractor shall be liable to the State for any and all damages incurred by the State and any and all expenses incurred by the State which exceed the amount the State would have paid Contractor under this Contract. Contractor agrees to cooperate with the State in the event of a Contract Termination or Partial Default.
- b. **State Breach**— In the event of a Breach of Contract by the State, the Contractor shall notify the State in writing within 30 days of any Breach of Contract by the State. Said notice shall contain a description of the Breach. Failure by the Contractor to provide said written notice shall operate as an absolute waiver by the Contractor of the State's Breach. In no event shall any Breach on the part of the State excuse the Contractor from full performance under this Contract. In the event of Breach by the State, the Contractor may avail itself of any remedy at law in the forum with appropriate jurisdiction; provided, however, failure by the Contractor to give the State written notice and opportunity to cure as described herein operates as a waiver of the State's Breach. Failure by the Contractor to file a claim before the appropriate forum in Tennessee with jurisdiction to hear such claim within one (1) year of the written notice of Breach shall operate as a waiver of said claim in its entirety. It is agreed by the parties this provision establishes a contractual period of limitations for any claim brought by the Contractor.

IN WITNESS WHEREOF,

NURSING RESOURCE SOLUTIONS CORPORATION.:



DARREN WHITE, DIRECTOR OF OPERATIONS

3/17/10

DATE

DEPARTMENT OF HUMAN SERVICES:



VIRGINIA T. LODGE, COMMISSIONER

8/20/2010

DATE

ATTACHMENT A**BREACHES AND ASSOCIATED LIQUIDATED DAMAGES**

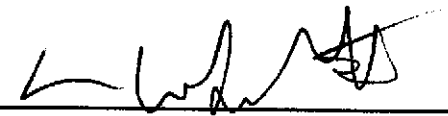
	Breach	Amount	Penalty
1.	Failure to fill routine staffing needs which are communicated by the State. (Reference Section A.24.)	Two (2) times the applicable rate for the service, as shown in Section C.3.	Per hour of unmet staffing need
2.	Failure to fill non-routine staffing needs within forty-eight (48) hours of notification by the State. (Reference Section A.25.)	One and One-Half (1½) times the applicable rate for the service, as shown in Section C.3.	Per hour of unmet staffing need

ATTACHMENT B

ATTESTATION RE PERSONNEL USED IN CONTRACT PERFORMANCE

SUBJECT CONTRACT NUMBER:	
CONTRACTOR LEGAL ENTITY NAME:	Nursing Resource Solutions Corp
FEDERAL EMPLOYER IDENTIFICATION NUMBER: (or Social Security Number)	27-1478233

The Contractor, identified above, does hereby attest, certify, warrant, and assure that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract.



CONTRACTOR SIGNATURE

NOTICE: This attestation MUST be signed by an individual empowered to contractually bind the Contractor. If said individual is not the chief executive or president, this document shall attach evidence showing the individual's authority to contractually bind the Contractor.

Darren White, Dir of Operations

PRINTED NAME AND TITLE OF SIGNATORY

8/17/10

DATE OF ATTESTATION